



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Newport Offshore, Ltd.--Request for
Reconsideration
File: B-225653.2
Date: April 3, 1987

DIGEST

In the absence of an allegation that the awardee took exception in its bid to any solicitation requirement, prior dismissal of a protest contending that the awardee's bid was nonresponsive because the firm's planned method of performance would result in solicitation requirements not being met is affirmed since how a bidder intends to meet contract requirements involves bidder responsibility, not responsiveness.

DECISION

Newport Offshore, Ltd. requests reconsideration of our dismissal of its protest of the award of a contract to Promet Marine Services Corp. under invitation for bids (IFB) No. N62789-86-B-0005, issued by the Navy's Supervisor of Shipbuilding, Conversion and Repair, Groton, Connecticut. We affirm our dismissal of the protest.

The IFB, which was for the overhaul of the vessel Labrador, contained requirements for drydocking and undocking the craft. Paragraph 3.3.3 of the blocking instructions stated that block loading pressures must be limited to a maximum of "10 long tons per square foot." When the agency opened bids on October 3, 1986, Promet was the lowest bidder and Newport was second lowest. By letter dated December 11, after receiving notice of the award to Promet, Newport protested to the contracting officer contending that Promet planned to use a drydocking technique that would result in the maximum tons-per-square-foot requirement not being met. Newport's position was that this rendered Promet's bid nonresponsive. The agency informed Newport that its protest on this issue was untimely since a representative of Newport had discussed Promet's drydocking technique with the agency by telephone more than 1 month prior to the agency's receipt of the protest.

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Newport then complained to this Office that its protest to the agency was indeed timely since it was not until Newport received the notice of award that the firm could be certain that it had a basis for protest. Prior to that time, says Newport, it knew only that Promet's drydocking technique was under consideration by the agency. Newport requested this Office to declare that it was the lowest responsive bidder or, alternatively, require rebidding of the requirement under specifications that would allow use of the less expensive drydocking technique that Promet allegedly planned to use. We dismissed the protest because, as discussed below, Newport's protest was essentially a challenge of the contracting officer's affirmative determination of Promet's responsibility, and none of the circumstances specified in our Bid Protest Regulations under which we would consider such a protest, 4 C.F.R. § 21.3(f)(5) (1986), had been shown to exist.

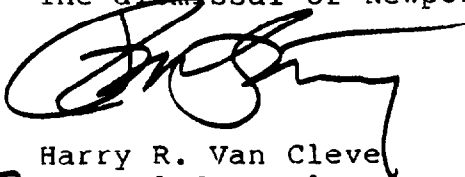
In requesting reconsideration, Newport contends that we erred in characterizing the issue raised by its protest as one involving responsibility. Newport asks that we address the responsiveness of Promet's bid.

As the protester correctly notes, to be responsive a bid must comply in all material respects with the IFB. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.301(a) (1986). A bid that fails to conform to the essential requirements of the IFB must be rejected. FAR, 48 C.F.R. § 14.404-2. Responsiveness is determined at the time of bid opening, however, and solely from material submitted with the bid. Southwest Mobile Systems Corp., B-223940, Aug. 21, 1986, 86-2 CPD ¶ 213. Here, Newport does not allege, nor does the record otherwise indicate, that Promet took exception in its bid to the minimum block loading pressure requirement. Rather, Newport's complaint concerns how Promet plans to perform the contract. In this respect, the solicitation did not specify any particular method of drydocking the vessel, and how a bidder intends to meet its obligations if awarded a contract under a sealed bid solicitation involves bidder responsibility, not bid responsiveness. Jersey Maid Distributors, Inc., B-217307, Mar. 13, 1985, 85-1 CPD ¶ 307.

By awarding the contract to Promet, the contracting officer made an affirmative determination that Promet is capable of performing the contract in accordance with the terms specified in the solicitation. The ARO Corp., B-222486, June 25, 1986, 86-2 CPD ¶ 6. Because such determinations involve subjective judgments that generally are not susceptible of

reasoned review, this Office does not review affirmative responsibility determinations unless there has been a showing that the contracting officer may have acted fraudulently or in bad faith or that definitive responsibility criteria contained in the solicitation were not met. 4 C.F.R. § 21.3(f)(5); Aleman Food Service, Inc., B-223959, Aug. 28, 1986, 86-2 CPD ¶ 238. Newport has made no such showing here.

The dismissal of Newport's protest is affirmed.



for Harry R. Van Cleve
General Counsel